

REFERENCE TITLE: tax credit; research and development

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2677

Introduced by
Representative Reagan, Senator Martin

AN ACT

AMENDING SECTIONS 43-1074.01 AND 43-1168, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 11, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 7; RELATING TO INDIVIDUAL AND CORPORATE INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 43-1074.01, Arizona Revised Statutes, is amended to read:

43-1074.01. Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to ~~section 41 of the internal revenue code, except that:~~ CHAPTER 11, ARTICLE 7 OF THIS TITLE.

~~1.~~ The amount of the credit is based on the excess, if any, of the qualified research expenses for the taxable year DETERMINED PURSUANT TO SECTION 43-1191.01 over the base amount as ~~defined in section 41(c) of the internal revenue code~~ DETERMINED PURSUANT TO SECTION 43-1191.02 and is computed as follows:

~~(a)~~ 1. If the excess is two million five hundred thousand dollars or less, the credit is equal to ~~twenty~~ THIRTY per cent of that amount.

~~(b)~~ 2. If the excess is over two million five hundred thousand dollars, the credit is equal to ~~five~~ SEVEN hundred FIFTY thousand dollars plus ~~eleven~~ TWENTY-ONE per cent of any amount exceeding two million five hundred thousand dollars, except that:

~~(i)~~ (a) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

~~(ii)~~ (b) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

~~2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.~~

~~3.~~ B. If two or more taxpayers, including partners in a partnership and shareholders of an S corporation, as defined in section 1361 of the internal revenue code, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

~~4.~~ C. The credit under this section applies only to expenses incurred from and after December 31, 2000.

~~5. The termination provisions of section 41 of the internal revenue code do not apply.~~

~~B.~~ D. If the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after

December 31, 2002 that may be used in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses.

Sec. 2. Section 43-1168, Arizona Revised Statutes, is amended to read:

~~43-1168.~~ Credit for increased research activities

A. A credit is allowed against the taxes imposed by this title in an amount determined pursuant to ~~section 41 of the internal revenue code, except that:~~ ARTICLE 7 OF THIS CHAPTER.

~~1.~~ The amount of the credit is computed as follows:

~~(a)~~ 1. Add:

~~(i)~~ (a) The excess, if any, of the qualified research expenses for the taxable year over the base amount as ~~defined in section 41(c) of the internal revenue code~~ DETERMINED PURSUANT TO SECTION 43-1191.02.

~~(ii)~~ (b) The basic research payments determined under section ~~41(c)(1)(A) of the internal revenue code~~ 43-1191.04, SUBSECTION A.

~~(b)~~ 2. If the sum computed under ~~subdivision (a) PARAGRAPH 1~~ is two million five hundred thousand dollars or less, the credit is equal to ~~twenty~~ THIRTY per cent of that amount.

~~(c)~~ 3. If the sum computed under ~~subdivision (a) PARAGRAPH 1~~ is over two million five hundred thousand dollars, the credit is equal to ~~five~~ SEVEN hundred FIFTY thousand dollars plus ~~eleven~~ TWENTY-ONE per cent of any amount exceeding two million five hundred thousand dollars, except that:

~~(i)~~ (a) For taxable years beginning from and after December 31, 2000 through December 31, 2001, the credit shall not exceed one million five hundred thousand dollars.

~~(ii)~~ (b) For taxable years beginning from and after December 31, 2001 through December 31, 2002, the credit shall not exceed two million five hundred thousand dollars.

~~2. Qualified research includes only research conducted in this state including research conducted at a university in this state and paid for by the taxpayer.~~

~~3.~~ B. If two or more taxpayers, including corporate partners in a partnership, share in the eligible expenses, each taxpayer is eligible to receive a proportionate share of the credit.

~~4.~~ C. The credit under this section applies only to expenses incurred from and after December 31, 1993.

~~5. The termination provisions of section 41 of the internal revenue code do not apply.~~

~~B.~~ D. If the allowable credit under this section exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes may be carried forward to the next fifteen consecutive taxable years. The amount of credit carryforward from taxable years beginning from and after December 31, 2000 through December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability

under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The amount of credit carryforward from taxable years beginning from and after December 31, 2002 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title minus the credit under this section for the current taxable year's qualified research expenses.

~~E.~~ E. If a taxpayer has qualified research expenses that are carried forward from taxable years beginning before January 1, 2001, the amount of the expenses carried forward shall be converted to a credit carryforward by multiplying the amount of the qualified expenses carried forward by twenty per cent. A credit carryforward determined under this subsection may be carried forward to not more than fifteen years from the year in which the expenses were incurred. The amount of credit carryforward from taxable years beginning before January 1, 2001 that may be used under this subsection in any taxable year may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses. The total amount of credit carryforward from taxable years beginning before January 1, 2003 that may be used in any taxable year under ~~the provisions of~~ subsection ~~B-~~ D OF THIS SECTION and this subsection may not exceed the taxpayer's tax liability under this title or five hundred thousand dollars, whichever is less, minus the credit under this section for the current taxable year's qualified research expenses.

Sec. 3. Title 43, chapter 11, Arizona Revised Statutes, is amended by adding article 7, to read:

ARTICLE 7. CREDIT FOR INCREASING RESEARCH ACTIVITIES

43-1191. Credit for increasing research activities

A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE IN AN AMOUNT COMPUTED PURSUANT TO SECTION 43-1074.01, SUBSECTION A OR SECTION 43-1168, SUBSECTION A, AS APPLICABLE.

43-1191.01. Qualified research expenses

A. FOR THE PURPOSES OF THE CREDIT PROVIDED BY THIS ARTICLE, QUALIFIED RESEARCH EXPENSES ARE THE SUM OF THE FOLLOWING AMOUNTS THAT ARE PAID OR INCURRED BY THE TAXPAYER DURING THE TAXABLE YEAR IN CARRYING ON THE TAXPAYER'S TRADE OR BUSINESS:

1. THE FOLLOWING IN-HOUSE RESEARCH EXPENSES:

(a) ANY WAGES, AS DEFINED IN SECTION 3401(a) OF THE INTERNAL REVENUE CODE, PAID OR INCURRED TO AN EMPLOYEE FOR QUALIFIED SERVICES PERFORMED BY THE EMPLOYEE. IN THE CASE OF AN EMPLOYEE, WAGES INCLUDE THE EARNED INCOME OF THE EMPLOYEE. FOR THE PURPOSES OF THIS SUBDIVISION:

(i) WAGES DOES NOT INCLUDE ANY AMOUNT TAKEN INTO ACCOUNT IN DETERMINING THE TARGETED JOBS CREDIT UNDER SECTION 51(a) OF THE INTERNAL REVENUE CODE.

(ii) "QUALIFIED SERVICES" MEANS EITHER ENGAGING IN QUALIFIED RESEARCH OR DIRECTLY SUPERVISING OR DIRECTLY SUPPORTING RESEARCH ACTIVITIES THAT CONSTITUTE QUALIFIED RESEARCH. IF SUBSTANTIALLY ALL OF THE SERVICES PERFORMED BY AN INDIVIDUAL FOR THE TAXPAYER DURING THE TAXABLE YEAR CONSIST OF SERVICES MEETING THE REQUIREMENTS OF THIS SUBDIVISION, QUALIFIED SERVICES MEANS ALL OF THOSE SERVICES PERFORMED FOR THE TAXPAYER DURING THE TAXABLE YEAR.

(b) ANY AMOUNT PAID OR INCURRED FOR SUPPLIES USED IN CONDUCTING QUALIFIED RESEARCH. FOR THE PURPOSES OF THIS SUBDIVISION, "SUPPLIES" MEANS ANY TANGIBLE PERSONAL PROPERTY BUT DOES NOT INCLUDE LAND, IMPROVEMENTS TO LAND OR PROPERTY OF A CHARACTER SUBJECT TO AN ALLOWANCE FOR DEPRECIATION.

(c) ANY AMOUNT PAID OR INCURRED TO ANOTHER PERSON FOR THE RIGHT TO USE COMPUTERS IN CONDUCTING QUALIFIED RESEARCH, AS DETERMINED PURSUANT TO RULES ADOPTED BY THE DEPARTMENT. THIS SUBDIVISION DOES NOT APPLY TO ANY AMOUNT TO THE EXTENT THAT THE TAXPAYER, OR ANY PERSON WITH WHOM THE TAXPAYER MUST AGGREGATE EXPENSES UNDER SECTION _____, RECEIVES OR ACCRUES FROM ANY OTHER PERSON FOR THE RIGHT TO USE SUBSTANTIALLY IDENTICAL PERSONAL PROPERTY.

2. SIXTY-FIVE PER CENT OF CONTRACT RESEARCH EXPENSES THAT WERE PAID OR INCURRED BY THE TAXPAYER TO ANY PERSON, OTHER THAN THE TAXPAYER'S EMPLOYEE, FOR QUALIFIED RESEARCH. IF THESE EXPENSES ARE PREPAID AMOUNTS THAT ARE ATTRIBUTABLE TO QUALIFIED RESEARCH TO BE CONDUCTED AFTER THE CLOSE OF THE TAXABLE YEAR, THAT AMOUNT SHALL BE TREATED AS PAID OR INCURRED DURING THE PERIOD DURING WHICH THE QUALIFIED RESEARCH IS CONDUCTED.

B. IN THE CASE OF IN-HOUSE RESEARCH EXPENSES, A TAXPAYER IS CONSIDERED TO MEET THE TRADE OR BUSINESS REQUIREMENT OF SUBSECTION A OF THIS SECTION IF, AT THE TIME THE IN-HOUSE RESEARCH EXPENSES WERE PAID OR INCURRED, THE PRINCIPAL PURPOSE OF THE TAXPAYER IN MAKING THE EXPENDITURES WAS TO USE THE RESULTS OF THE RESEARCH IN ACTIVELY CONDUCTING A FUTURE TRADE OR BUSINESS OF THE TAXPAYER OR OF ONE OR MORE OTHER PERSONS WHO, WITH THE TAXPAYER, ARE TREATED AS A SINGLE TAXPAYER UNDER SECTION 43-_____.

43-1191.02. Base amount

A. FOR THE PURPOSES OF COMPUTING THE CREDIT PROVIDED BY THIS ARTICLE, THE BASE AMOUNT IS COMPUTED BY MULTIPLYING THE FIXED-BASE PERCENTAGE, AS PRESCRIBED BY THIS SECTION, BY THE TAXPAYER'S AVERAGE ANNUAL GROSS RECEIPTS FOR THE FOUR TAXABLE YEARS PRECEDING THE CURRENT TAXABLE YEAR, EXCEPT THAT THE BASE AMOUNT SHALL BE AT LEAST ONE-HALF OF THE QUALIFIED RESEARCH EXPENSES FOR THE CURRENT TAXABLE YEAR AS COMPUTED UNDER SECTION 43-1191.01.

B. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE FIXED-BASE PERCENTAGE IS THE PERCENTAGE THAT THE TAXPAYER'S AGGREGATE QUALIFIED RESEARCH EXPENSES FOR TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 1983 BUT BEFORE JANUARY 1, 1989 IS OF THE TAXPAYER'S AGGREGATE GROSS RECEIPTS FOR THOSE TAXABLE YEARS. IF THE TAXPAYER HAS FEWER THAN THREE TAXABLE YEARS BEGINNING FROM AND AFTER DECEMBER 31, 1983 AND BEFORE JANUARY 1, 1989, IN WHICH THE TAXPAYER HAD BOTH GROSS RECEIPTS AND QUALIFIED RESEARCH EXPENSES, THE FIXED-BASE PERCENTAGE IS:

1 1. THREE PER CENT FOR EACH OF THE TAXPAYER'S FIRST FIVE TAXABLE YEARS
2 BEGINNING FROM AND AFTER DECEMBER 31, 1993 FOR WHICH THE TAXPAYER HAS
3 QUALIFIED RESEARCH EXPENSES.

4 2. IN THE CASE OF THE TAXPAYER'S SIXTH SUCH TAXABLE YEAR, ONE-SIXTH OF
5 THE PERCENTAGE THAT THE TAXPAYER'S AGGREGATE QUALIFIED RESEARCH EXPENSES FOR
6 THE FOURTH AND FIFTH TAXABLE YEARS IS OF THE TAXPAYER'S AGGREGATE GROSS
7 RECEIPTS FOR THOSE YEARS.

8 3. IN THE CASE OF THE TAXPAYER'S SEVENTH SUCH TAXABLE YEAR, ONE-THIRD
9 OF THE PERCENTAGE THAT THE TAXPAYER'S AGGREGATE QUALIFIED RESEARCH EXPENSES
10 FOR THE FIFTH AND SIXTH TAXABLE YEARS IS OF THE TAXPAYER'S AGGREGATE GROSS
11 RECEIPTS FOR THOSE YEARS.

12 4. IN THE CASE OF THE TAXPAYER'S EIGHTH SUCH TAXABLE YEAR, ONE-HALF OF
13 THE PERCENTAGE THAT THE TAXPAYER'S AGGREGATE QUALIFIED RESEARCH EXPENSES FOR
14 THE FIFTH, SIXTH AND SEVENTH TAXABLE YEARS IS OF THE TAXPAYER'S AGGREGATE
15 GROSS RECEIPTS FOR THOSE YEARS.

16 5. IN THE CASE OF THE TAXPAYER'S NINTH SUCH TAXABLE YEAR, TWO-THIRDS
17 OF THE PERCENTAGE THAT THE TAXPAYER'S AGGREGATE QUALIFIED RESEARCH EXPENSES
18 FOR THE FIFTH, SIXTH, SEVENTH AND EIGHTH SUCH TAXABLE YEARS IS OF THE
19 TAXPAYER'S AGGREGATE GROSS RECEIPTS FOR THOSE YEARS.

20 6. IN THE CASE OF THE TAXPAYER'S TENTH SUCH TAXABLE YEAR, FIVE-SIXTHS
21 OF THE PERCENTAGE THAT THE TAXPAYER'S AGGREGATE QUALIFIED RESEARCH EXPENSES
22 FOR THE FIFTH, SIXTH, SEVENTH, EIGHTH AND NINTH SUCH TAXABLE YEARS IS OF THE
23 TAXPAYER'S AGGREGATE GROSS RECEIPTS FOR THOSE YEARS.

24 7. FOR TAXABLE YEARS THEREAFTER, THE PERCENTAGE THAT THE TAXPAYER'S
25 AGGREGATE QUALIFIED RESEARCH EXPENSES FOR ANY FIVE TAXABLE YEARS SELECTED BY
26 THE TAXPAYER FROM AMONG THE FIFTH THROUGH THE TENTH SUCH TAXABLE YEARS IS OF
27 THE TAXPAYER'S AGGREGATE GROSS RECEIPTS FOR THOSE SELECTED YEARS.

28 C. THE DEPARTMENT MAY ADOPT RULES FOR DISREGARDING DE MINIMIS AMOUNTS
29 OF GROSS RECEIPTS AND QUALIFIED RESEARCH EXPENSES UNDER SUBSECTION B OF THIS
30 SECTION. THE FIXED-BASE PERCENTAGE UNDER SUBSECTION B OF THIS SECTION SHALL
31 NOT EXCEED SIXTEEN PER CENT. THE PERCENTAGES DETERMINED UNDER SUBSECTION B
32 OF THIS SECTION SHALL BE ROUNDED TO THE NEAREST ONE-ONE HUNDREDTH OF ONE PER
33 CENT.

34 D. NOTWITHSTANDING WHETHER THE PERIOD FOR FILING A CLAIM FOR CREDIT OR
35 REFUND HAS EXPIRED FOR ANY TAXABLE YEAR TAKEN INTO ACCOUNT IN DETERMINING THE
36 FIXED-BASE PERCENTAGE, THE QUALIFIED RESEARCH EXPENSES TAKEN INTO ACCOUNT IN
37 COMPUTING THAT PERCENTAGE SHALL BE DETERMINED ON A BASIS CONSISTENT WITH THE
38 DETERMINATION OF QUALIFIED RESEARCH EXPENSES FOR THE CREDIT YEAR. THE
39 DEPARTMENT MAY ADOPT RULES TO PREVENT DISTORTIONS IN COMPUTING A TAXPAYER'S
40 QUALIFIED RESEARCH EXPENSES OR GROSS RECEIPTS CAUSED BY A CHANGE IN
41 ACCOUNTING METHODS USED BY THE TAXPAYER BETWEEN THE CURRENT YEAR AND A YEAR
42 TAKEN INTO ACCOUNT IN COMPUTING THE TAXPAYER'S FIXED-BASE PERCENTAGE.

43 E. FOR THE PURPOSES OF THIS SECTION, GROSS RECEIPTS FOR ANY TAXABLE
44 YEAR SHALL BE REDUCED BY RETURNS AND ALLOWANCES MADE DURING THE TAXABLE YEAR.
45 A FOREIGN CORPORATION SHALL TAKE INTO ACCOUNT ONLY GROSS RECEIPTS THAT ARE

EFFECTIVELY CONNECTED WITH CONDUCTING A TRADE OR BUSINESS IN THE UNITED STATES.

43-1191.03. Qualified research; definition

A. FOR THE PURPOSES OF COMPUTING THE CREDIT UNDER THIS ARTICLE, QUALIFIED RESEARCH IS RESEARCH:

1. WITH RESPECT TO WHICH EXPENDITURES MAY BE TREATED AS EXPENSES UNDER SECTION 174 OF THE INTERNAL REVENUE CODE.

2. THAT IS UNDERTAKEN TO DISCOVER INFORMATION:

(a) THAT IS TECHNOLOGICAL IN NATURE.

(b) THE APPLICATION OF WHICH IS INTENDED TO BE USEFUL IN DEVELOPING A NEW OR IMPROVED BUSINESS COMPONENT OF THE TAXPAYER.

3. SUBSTANTIALLY ALL OF THE ACTIVITIES OF WHICH CONSTITUTE ELEMENTS OF A PROCESS OF EXPERIMENTATION IF IT RELATES TO A NEW OR IMPROVED FUNCTION, PERFORMANCE OR RELIABILITY OR QUALITY. RESEARCH SHALL NOT BE CONSIDERED TO BE CONDUCTED FOR THESE PURPOSES IF IT RELATES TO STYLE, TASTE, COSMETIC OR SEASONAL DESIGN FACTORS.

4. SUBSTANTIALLY ALL OF THE ACTIVITIES OF WHICH ARE CONDUCTED IN THIS STATE INCLUDING RESEARCH CONDUCTED AT A UNIVERSITY IN THIS STATE AND PAID BY THE TAXPAYER.

B. FOR THE PURPOSES OF THIS SECTION, SUBSECTION A SHALL BE APPLIED SEPARATELY WITH RESPECT TO EACH OF THE TAXPAYER'S BUSINESS COMPONENTS. ANY PLANT PROCESS, MACHINERY OR TECHNIQUE FOR COMMERCIALLY PRODUCING A BUSINESS COMPONENT IS CONSIDERED TO BE A SEPARATE BUSINESS COMPONENT, AND NOT AS PART OF THE BUSINESS COMPONENT BEING PRODUCED.

C. FOR THE PURPOSES OF THIS SECTION, QUALIFIED RESEARCH DOES NOT INCLUDE:

1. ANY RESEARCH CONDUCTED AFTER THE BEGINNING OF COMMERCIAL PRODUCTION OF THE BUSINESS COMPONENT.

2. ANY RESEARCH RELATED TO ADAPTING AN EXISTING BUSINESS COMPONENT TO A PARTICULAR CUSTOMER'S REQUIREMENT OR NEED.

3. ANY RESEARCH RELATED TO REPRODUCING ALL OR PART OF AN EXISTING BUSINESS COMPONENT FROM A PHYSICAL EXAMINATION OF THE BUSINESS COMPONENT ITSELF OR FROM PLANS, BLUEPRINTS, DETAILED SPECIFICATIONS OR PUBLICLY AVAILABLE INFORMATION WITH RESPECT TO THAT BUSINESS COMPONENT.

4. EFFICIENCY SURVEYS.

5. ACTIVITIES RELATING TO MANAGEMENT FUNCTION OR TECHNIQUE.

6. MARKET RESEARCH, TESTING OR DEVELOPMENT, INCLUDING ADVERTISING OR PROMOTIONS.

7. ROUTINE DATA COLLECTION.

8. ROUTINE OR ORDINARY TESTING OR INSPECTION FOR QUALITY CONTROL.

9. EXCEPT TO THE EXTENT PROVIDED BY RULES ADOPTED BY THE DEPARTMENT, ANY RESEARCH WITH RESPECT TO COMPUTER SOFTWARE THAT IS DEVELOPED BY OR FOR THE BENEFIT OF THE TAXPAYER PRIMARILY FOR INTERNAL USE BY THE TAXPAYER, OTHER THAN FOR USE IN:

1 (a) AN ACTIVITY THAT CONSTITUTES QUALIFIED RESEARCH, DETERMINED
2 WITHOUT REGARD TO THIS PARAGRAPH.

3 (b) A PRODUCTION PROCESS WITH RESPECT TO WHICH THE REQUIREMENTS OF
4 SUBSECTION A ARE MET.

5 10. ANY RESEARCH CONDUCTED OUTSIDE THIS STATE.

6 11. ANY RESEARCH IN THE SOCIAL SCIENCES, ARTS OR HUMANITIES.

7 12. ANY RESEARCH TO THE EXTENT IT IS FUNDED BY ANY GRANT OR CONTRACT OR
8 OTHERWISE BY ANOTHER PERSON OR GOVERNMENTAL ENTITY.

9 D. FOR THE PURPOSES OF THIS SECTION, "BUSINESS COMPONENT" MEANS ANY
10 PRODUCT, PROCESS, COMPUTER SOFTWARE, TECHNIQUE, FORMULA OR INVENTION THAT IS
11 TO BE EITHER HELD FOR SALE, LEASE OR LICENSE OR USED BY THE TAXPAYER IN THE
12 TAXPAYER'S TRADE OR BUSINESS.

13 43-1191.04. Payments to qualified organizations for basic
14 research; definitions

15 A. IN THE CASE OF A TAXPAYER THAT MAKES BASIC RESEARCH PAYMENTS FOR
16 ANY TAXABLE YEAR:

17 1. THE AMOUNT OF BASIC RESEARCH PAYMENTS TAKEN INTO ACCOUNT UNDER
18 SECTION 43-1168, SUBSECTION A, PARAGRAPH 1, SUBDIVISION (b) IS EQUAL TO THE
19 DIFFERENCE BETWEEN THE BASIC RESEARCH PAYMENTS OVER THE QUALIFIED
20 ORGANIZATION BASE PERIOD AMOUNT.

21 2. THE PORTION OF THE BASIC RESEARCH PAYMENTS THAT DOES NOT EXCEED THE
22 QUALIFIED ORGANIZATION BASE PERIOD AMOUNT SHALL BE CONSIDERED TO BE CONTRACT
23 RESEARCH EXPENSES FOR PURPOSES OF SECTION 43-1191.01, SUBSECTION A,
24 PARAGRAPH 2.

25 B. FOR THE PURPOSES OF APPLYING THIS SECTION, "BASIC RESEARCH PAYMENT"
26 MEANS, WITH RESPECT TO ANY TAXABLE YEAR, ANY AMOUNT THAT IS PAID IN CASH
27 DURING THE TAXABLE YEAR BY A CORPORATION TO ANY QUALIFIED ORGANIZATION FOR
28 BASIC RESEARCH, BUT ONLY IF BOTH OF THE FOLLOWING APPLY:

29 1. THE PAYMENT IS PURSUANT TO A WRITTEN AGREEMENT BETWEEN THE
30 CORPORATION AND THE QUALIFIED ORGANIZATION.

31 2. THE BASIC RESEARCH IS TO BE PERFORMED BY THE QUALIFIED
32 ORGANIZATION, EXCEPT THAT THIS PARAGRAPH DOES NOT APPLY IN THE CASE OF A
33 QUALIFIED ORGANIZATION DESCRIBED IN SUBSECTION D OF THIS SECTION.

34 C. FOR THE PURPOSES OF APPLYING THIS SECTION, QUALIFIED ORGANIZATION
35 BASE PERIOD AMOUNT IS THE SUM OF:

36 1. AN AMOUNT EQUAL TO THE GREATER OF ONE PER CENT OF THE AVERAGE OF
37 THE SUM OF AMOUNTS PAID OR INCURRED DURING THE BASE PERIOD FOR ANY IN-HOUSE
38 RESEARCH EXPENSES AND ANY CONTRACT RESEARCH EXPENSES OR THE AMOUNTS TREATED
39 AS CONTRACT RESEARCH EXPENSES DURING THE BASE PERIOD BY REASON OF THIS
40 SECTION, AS IN EFFECT DURING THE BASE PERIOD. EXCEPT IN THE CASE OF A
41 TAXPAYER THAT WAS IN EXISTENCE DURING A TAXABLE YEAR, OTHER THAN A SHORT
42 TAXABLE YEAR, IN THE BASE PERIOD, THE AMOUNT UNDER THIS PARAGRAPH FOR ANY
43 BASE PERIOD SHALL BE AT LEAST ONE-HALF OF THE BASIC RESEARCH PAYMENTS FOR THE
44 TAXABLE YEAR FOR WHICH A DETERMINATION IS BEING MADE UNDER THIS SUBSECTION.

2. AN AMOUNT EQUAL TO THE EXCESS, IF ANY, OF AN AMOUNT EQUAL TO THE AVERAGE OF THE NONDESIGNATED UNIVERSITY CONTRIBUTIONS PAID BY THE TAXPAYER DURING THE BASE PERIOD MULTIPLIED BY THE COST OF LIVING ADJUSTMENT FOR THE CALENDAR YEAR IN WHICH THE TAXABLE YEAR BEGINS OVER THE AMOUNT OF NONDESIGNATED UNIVERSITY CONTRIBUTIONS PAID BY THE TAXPAYER DURING THE TAXABLE YEAR. FOR THE PURPOSES OF THIS PARAGRAPH:

(a) "NONDESIGNATED UNIVERSITY CONTRIBUTION" MEANS ANY AMOUNT PAID BY A TAXPAYER TO ANY QUALIFIED ORGANIZATION DESCRIBED IN SUBSECTION D, PARAGRAPH 1 OF THIS SECTION FOR WHICH A DEDUCTION WAS ALLOWABLE UNDER SECTION 170 OF THE INTERNAL REVENUE CODE AND THAT WAS NOT TAKEN INTO ACCOUNT IN COMPUTING THE AMOUNT OF THE CREDIT UNDER THIS SECTION, AS IN EFFECT DURING THE BASE PERIOD, DURING ANY TAXABLE YEAR IN THE BASE PERIOD, OR AS A BASIC RESEARCH PAYMENT FOR PURPOSES OF THIS SECTION.

(b) THE COST OF LIVING ADJUSTMENT FOR ANY CALENDAR YEAR IS THE COST OF LIVING ADJUSTMENT DESCRIBED IN SECTION 1(f)(3) OF THE INTERNAL REVENUE CODE.

D. FOR THE PURPOSES OF THIS SECTION, "QUALIFIED ORGANIZATION" MEANS ANY OF THE FOLLOWING ORGANIZATIONS:

1. AN INSTITUTION OF HIGHER EDUCATION THAT IS DESCRIBED IN SECTION 170(b)(1)(A)(ii) OF THE INTERNAL REVENUE CODE.

2. AN ORGANIZATION THAT IS NOT INCLUDED IN PARAGRAPH 1 OF THIS SUBSECTION, THAT IS EXEMPT FROM TAXATION UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE, THAT IS ORGANIZED AND OPERATED PRIMARILY TO CONDUCT SCIENTIFIC RESEARCH AND THAT IS NOT A PRIVATE FOUNDATION.

3. AN ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER SECTION 501(c)(3), OTHER THAN A PRIVATE FOUNDATION, OR SECTION 501(c)(6) OF THE INTERNAL REVENUE CODE, THAT IS ORGANIZED AND OPERATED PRIMARILY TO PROMOTE SCIENTIFIC RESEARCH BY QUALIFIED ORGANIZATIONS UNDER THIS ARTICLE PURSUANT TO WRITTEN RESEARCH AGREEMENTS AND THAT CURRENTLY SPENDS SUBSTANTIALLY ALL OF ITS MONIES OR SUBSTANTIALLY ALL OF THE BASIC RESEARCH PAYMENTS IT RECEIVES FOR GRANTS TO OR CONTRACTS FOR BASIC RESEARCH WITH AN ORGANIZATION DESCRIBED IN SECTION 43-1191.01.

4. AN ORGANIZATION THAT IS NOT DESCRIBED IN PARAGRAPH 2 OR 3 OF THIS SUBSECTION, THAT IS EXEMPT FROM TAXATION UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE, OTHER THAN A PRIVATE FOUNDATION THAT IS ESTABLISHED AND MAINTAINED BY AN ORGANIZATION THAT WAS ESTABLISHED BEFORE JULY 10, 1981 AND THAT IS ALSO EXEMPT FROM TAXATION UNDER SECTION 501(c)(3) OF THE INTERNAL REVENUE CODE, AND THAT IS ORGANIZED AND OPERATED EXCLUSIVELY TO MAKE GRANTS TO ORGANIZATIONS DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION PURSUANT TO WRITTEN RESEARCH AGREEMENTS FOR PURPOSES OF BASIC RESEARCH AND MAKES AN ELECTION, REVOCABLE ONLY WITH THE CONSENT OF THE DEPARTMENT, TO BE TREATED AS A PRIVATE FOUNDATION FOR PURPOSES OF THE INTERNAL REVENUE CODE, OTHER THAN SECTION 4940.

1 E. FOR THE PURPOSES OF THIS SECTION:

2 1. "BASE PERIOD" MEANS THE THREE TAXABLE YEAR PERIOD ENDING WITH THE
3 TAXABLE YEAR IMMEDIATELY BEFORE THE FIRST TAXABLE YEAR OF THE TAXPAYER
4 BEGINNING FROM AND AFTER DECEMBER 31, 1983.

5 2. "BASIC RESEARCH" MEANS ANY ORIGINAL INVESTIGATION FOR THE
6 ADVANCEMENT OF SCIENTIFIC KNOWLEDGE NOT HAVING A SPECIFIC COMMERCIAL
7 OBJECTIVE, EXCEPT FOR BASIC RESEARCH CONDUCTED OUTSIDE THIS STATE AND BASIC
8 RESEARCH IN THE SOCIAL SCIENCES, ARTS OR HUMANITIES.

9 Sec. 4. Effective date

10 This act is effective and applies to taxable years beginning from and
11 after December 31, 2006.